

**REMARKS**

Claims 21 to 31 are added, and therefore claims 11 and 13 to 31 are now pending.

Applicants respectfully request reconsideration of the present application in view of this response.

With respect to paragraph three (3) of the Office Action, while the objections may not be agreed with, to facilitate matters, claims 11, 17, and 18 have been rewritten to better clarify or define the subject matter. Support may be found in the Substitute Specification, including, for example, at page 2, lines 20 to 23. Withdrawal of the objections is therefore respectfully requested.

With respect to paragraph four (4) of the Office Action, claims 11 and 13 to 20 were rejected under 35 U.S.C. § 112, second paragraph, as assertedly indefinite.

As explained above, while the rejections may not be agreed with, to facilitate matters, claims 11, 17, and 18 have been rewritten to better clarify or define the subject matter. The language “structurally arranged identically” has been replaced with the feature “structurally configured identically,” to better clarify that the phase terminal has a structure that is configured identically to one of the positive terminal or the negative terminal. In addition, rewritten claims 11, 17, and 18 better clarify that the phase terminal is situated rotated by 180° in relation to an orientation of one of the structurally identically configured positive terminal or structurally identically configured negative terminal.

Accordingly, claim 11 and its dependent claims 13 to 16, claim 17, and claim 18 and its dependent claims 19 and 20, are definite.

Withdrawal of the rejections is therefore respectfully requested.

With respect to paragraph five (5) of the Office Action, claims 18 and 19 were rejected under 35 U.S.C. § 102(e) as anticipated by Spitz et al., U.S. Patent No. 6,774,476.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary

skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 18 has been rewritten to provide the features that *the phase terminal is structurally configured identically to one of the positive terminal or the negative terminal, and the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically configured positive terminal or the structurally identically configured negative terminal.*

As to the “Spitz” reference, Figures 2 through 7 only indicate two mounting plates, an electrically conductive insert, and semiconductor substrates. This arrangement wholly differs from the presently claimed subject matter since the phase terminal is not structurally configured identically to one of the positive terminal or the negative terminal. Therefore, “Spitz” does not identically disclose (or even suggest) the feature that *the phase terminal is structurally configured identically to one of the positive terminal or the negative terminal*, as provided for in the context of claim 18, as presented. Further, nowhere does “Spitz” identically disclose (or suggest) that the phase terminal is situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the structurally identically configured positive or negative terminal. Therefore, “Spitz” does not identically disclose (or even suggest) the feature of *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically configured positive terminal or the structurally identically configured negative terminal*, as provided for in the context of claim 18, as presented.

Accordingly, claim 18 and its dependent claim 19 are allowable.

It is therefore respectfully requested that the anticipation rejections be withdrawn.

With respect to paragraph six-point-one (6.1) of the Office Action, claims 11, 13, 14, 15, 17, 18, and 20 were rejected under 35 U.S.C. § 102(b) as anticipated by Watanabe, Japanese Patent Publication No. JP-60101958, or in the alternative, under 35 U.S.C. § 103(a) as unpatentable over the “Watanabe” reference, in view of Acker et al., U.S. Patent No. 6,538,878.

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

While the rejections may not be agreed with, to facilitate matters, claims 11, 17, and 18 have been rewritten to provide the feature that *the phase terminal is structurally configured identically to one of the positive terminal or the negative terminal*. Further, claim 18 has been rewritten to provide the feature of *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically configured positive terminal or the structurally identically configured negative terminal*.

As to the “Watanabe” reference, the Office Action specifically admits that “Watanabe does not disclose the phase terminal is structurally arranged identically to one of the positive terminal or the negative terminal.” (Office Action, p. 7). Further, the Office Action admits that “Watanabe does not disclose the phase terminal being situatedly rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically arranged positive terminal or the structurally identically arranged negative terminal.” (Office Action, p. 10).

As to the “Acker” reference, the Office Action conclusorily asserts that “Acker teaches in Fig. 1 the phase terminal is arranged identically to one of the positive terminal or the negative terminal.” (Office Action, p. 7). However, “Acker” merely refers to a positive

conducting plate 16, a negative conducting plate 18, and conductive lugs 20, 22, and 24. All three components of "Acker" are structurally different from each other, as shown in Figures 1, 3, and 4. In addition, it is respectfully submitted that the present application does not describe a mere rearrangement of parts, as conclusorily suggested by the Office Action, but recites a positive, structural feature which provides, for example, manufacturing and assembly benefits.

Therefore, the "Acker" reference does not disclose (or suggest) the feature that *the phase terminal is structurally configured identically to one of the positive terminal or the negative terminal*, as provided for in the context of claims 11, 17, and 18, as presented. Further, "Acker" does not disclose that the phase terminal is situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically configured positive terminal or negative terminal. Therefore, "Acker" does not disclose (or suggest) the feature of *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically configured positive terminal or the structurally identically configured negative terminal*, as provided for in the context of claim 18, as presented.

Therefore, the combination of the "Watanabe" reference and the "Acker" reference does not disclose (or suggest) the feature that *the phase terminal is structurally configured identically to one of the positive terminal or the negative terminal*, as provided for in the context of claims 11, 17, and 18, as presented.

In addition, the combination of the "Watanabe" reference and the "Acker" reference does not disclose (or suggest) the feature of *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically configured positive terminal or the structurally identically configured negative terminal*, as provided for in the context of claim 18, as presented.

Accordingly, claim 11 and its dependent claims 13, 14, and 15, claim 17, and claim 18 and its dependent claim 20, are allowable.

It is therefore respectfully requested that the anticipation and obviousness rejections be withdrawn.

With respect to paragraph six-point-two (6.2) of the Office Action, claims 16 and 19 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of the

“Watanabe” reference and the “Acker” reference, further in view of Irmmler, International Patent No. WO-7900814.

Claim 16 depends from claim 11, as presented, and is therefore allowable for at least the same reasons as claim 11, as presented, since the tertiary “Irmmler” reference does not cure – and is not asserted to cure – the critical deficiencies of the combination of the “Watanabe” reference and the “Acker” reference. As to the “Irmmler” reference, Figure 1 only refers to three metal washers having different diameters. Therefore, “Irmmler” does not disclose (or suggest) the feature that *the phase terminal is structurally configured identically to one of the positive terminal or the negative terminal*, as provided for in the context of claim 11, as presented.

Claim 19 depends from claim 18, as presented, and is therefore allowable for at least the same reasons as claim 18, as presented, since the tertiary “Irmmler” reference does not cure – and is not asserted to cure – the critical deficiencies of the combination of the “Watanabe” reference and the “Acker” reference. As to the “Irmmler” reference, Figures 1 and 4 do not disclose (or suggest) the features that *the phase terminal is structurally configured identically to one of the positive terminal or the negative terminal*, and *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically configured positive terminal or the structurally identically configured negative terminal*, as provided for in the context of claim 18, as presented.

Accordingly, claims 16 and 19 are allowable.

It is therefore respectfully requested that the obviousness rejections be withdrawn.

With respect to paragraph seven (7) of the Office Action, the Office Action conclusorily asserts that “rearrangement of parts is an obvious matter of design choice.” (Office Action, p. 12). However, the feature of “structurally configured identically” is not merely a rearrangement of parts, but positively recites structural features of the terminals of the present claims. Further, the Office Action states that “the examiner wonders how it could be recognized that the phase terminal already had rotated by 180°.” (Office Action, p. 13). However, the phase terminal is not merely rotated, but is rotated in relation to an orientation of a structurally identically configured positive terminal or a structurally identically configured negative terminal.

Accordingly, claim 11 and its dependent claims 13 to 16, claim 17, and claim 18 and its dependent claims 19 and 20, are allowable.

New claims 21 to 31 do not add any new matter and are supported by the present application. Claims 21 to 26 depend from claim 18 and are therefore allowable for the same reasons as claim 18. Claims 27 to 31 depend from claim 17 and are therefore allowable for the same reasons as claim 17.

Accordingly, claims 11 and 13 to 31 are allowable.

**Conclusion**

It is therefore respectfully submitted that all of claims 11 and 13 to 31 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

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Respectfully submitted,

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